No. 96-255

(2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1995

ELSA MACDONALD,

Petitioner,

against

DELAWARE COUNTY BOARD OF SUPERVISORS,

Respondent.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

Statement of Facts

The opinion below jurisdiction and statement of the case are correctly set forth in the petition at pages "2" and "3".

Reasons for Denying Writ

The writ should be denied for the reasons set forth in the opinion rendered by the Second Circuit 80 F. 3d 42.

POINT I: Respondent's plan of legislative apportionment meets constitutional standards.

Weighted voting is not *per se* unconstitutional *Franklin v. Krause 415 U.S. 904* (1974); *Abate v. Mundt 403 US 182 (1971)* and *Jackson v. Nassau County 818 F. Supp. 509 (E.D.N.Y. 1993).*

POINT II: Court of Appeals applied the law as set forth by this Court as the same applies to local government.

This Court laid down the principal of one man one vote in *Baker v. Carr 369 U.S. 186 (1962)* and *Reynolds v. Sims 377 U.S. 533 (1964)* and that principal was applied to local governments *Avery v. Midland County 390 U.S. 474* (1968). The same case also stands for the proposition that flexibility is to be accorded local governments in the method by which they choose to govern. Delaware County beginning in the 1960's and continuing in the mid 1970's attempted to adopt plans of weighted voting and also proposed a plan of legislative districts. All of which were rejected by the County voters. The last of those proposals having been rejected in 1976 and it was only litigation in the New York Supreme Court (Mary Ann Hoskins v. The Board of Supervisors of the County of Delaware *et al* Supreme Court Delaware County Index #8587) that the County by Court order adopted a system of weighted voting which was modified by local law #4 of 1991 to apply the 1990 census figures to the plan.

Delaware County was organized in 1797; is divided into nineteen different towns ranging in population from 550 to 6,667 according to the 1990 census. The County legislative body, The Board of Supervisors, applies a system of weighted

voting to determine the vote of a given supervisor on each issue. The system of weighted voting is not used in committee but the committee system does not permit legislation from being "bottled up". The same must be reported back to the floor for a vote. This Court has held that

> "a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality".

Brown v. Thomson 426 U.S. 835 (1983). There is further no showing that Delaware County has been arbitrary or discriminated against any individual or group in its plan of apportionment and that it has in fact attempted to preserve town boundaries and traditional methods of county representation by enacting a plan of weighted voting.

POINT III: The correct line of inquiry in determining the validity of legislative districts is the weight of citizens' vote.

The Court set forth in *Board of Estimate v. Morris 489 U.S. 688 (1989)*

> "in calculating the deviation among districts, the relevant inquiry is whether the vote of any citizen is approximately equivalent in weight to that of any other citizen".

It was undisputed in the Courts below that the town with the greatest representation was the Town of Andes having a population of 2.737% of the County's total, while its supervisor on a vote requiring a simple majority casts a vote equal to 2.9885% of the total votes cast; that town was over represented by a factor of plus 0.2548. It was undisputed that the town with

the greatest unrepresentation was the Town of Sidney having a population of 14.1175%, with its supervisor casting a vote equal to 13.4483%. In the same situation being a deviation of minus 0.6692; being a total deviation of less than 1% (0.924) which the Court of Appeals found to be within constitutional limits (Petition page "15a").

Through such a plan of weighted voting each citizen's vote is accorded substantially the same weight. Petitioner's attempt to argue here as she has in the District Court and in the Court of Appeals that somehow this Court has held weighted voting to be *per se* unconstitutional, I cannot find nor has anyone else found, to my knowledge, an opinion in this Court that so holds.

To impose a plan of legislative districts would only further separate citizens from their government by imposing another layer of government less related to the communities it would then represent.

Conclusion

This Court having previously ruled on the matters raised by the petition, petition should be denied.

Respectfully submitted,

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